

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES

CRIMINAL ACTION

v.

JERMAINE COLEMAN

NO. 13-356

DuBois, J.

November 5, 2015

MEMORANDUM

I. INTRODUCTION

Presently before the Court is defendant Jermaine Coleman's Motion to Dismiss the Indictment for Violation of the Interstate Agreement on Detainers Act. The Indictment charges Coleman with three counts of bank robbery in violation of 18 U.S.C. § 2113(a). On August 21, 2014, Coleman pled guilty to all three counts. In the instant Motion, he argues that his transfer from federal custody to Pennsylvania state custody while awaiting sentencing in this Court violated the Interstate Agreement on Detainers Act, 18 U.S.C. App. 2, and requires dismissal of the Indictment with prejudice. For the reasons set forth below, the Court concludes that there was a violation of the Interstate Agreement on Detainers Act, but dismisses the Indictment without prejudice.

II. BACKGROUND

The facts of this case are undisputed. On March 19, 2013, Coleman was arrested by Pennsylvania state authorities on open state bank robbery charges and a state detainer for a parole violation. He was incarcerated at the George W. Hill Correctional Facility ("George W. Hill") on both the state bank robbery charges and the parole violation. On May 8, 2013, the Pennsylvania Board of Probation and Parole ("Parole Board") revoked Coleman's parole and recommitted him on his state sentence for a period of six months. The Parole Board decision

provided that Coleman was to be “reparoled automatically without further action of the board” on September 20, 2013, the end of the six-month period. The “max date” for Coleman’s state sentence was September 11, 2015.

While Coleman was incarcerated on the parole violation and pending state charges, on July 11, 2013, a federal grand jury issued an Indictment charging Coleman with three counts of bank robbery in violation of 18 U.S.C. § 2113(a). The same day, United States Magistrate Judge Elizabeth T. Hey issued a bench warrant for Coleman’s arrest. On July 17, 2013, the Federal Bureau of Investigation (“FBI”) lodged the arrest warrant with Pennsylvania prison authorities as a detainer against Coleman. Subsequently, on July 23, 2013, the FBI removed Coleman from George W. Hill pursuant to a writ of habeas corpus *ad prosequendum* issued by this Court. Later that day, Coleman appeared before United States Magistrate Judge Lynne Sitarski for an initial appearance hearing on pretrial detention and arraignment. Coleman pled not guilty to all three counts of the Indictment and was remanded to the custody of the U.S. Marshals.

By Order dated July 25, 2013, this case was specially listed for trial in this Court on September 9, 2013. Coleman requested continuances of the trial date multiple times. On August 19, 2013, Coleman filed an unopposed Motion for a 60 day continuance. Following a hearing on September 9, 2013, at which Coleman waived his rights under the Speedy Trial Act, the Court granted a continuance of trial until December 16, 2013. The Court granted additional continuances on Coleman’s motions following hearings on November 12, 2013, and April 7, 2014, at which he waived his Speedy Trial Act rights.

After giving notice of intent to change his plea and following an additional continuance, Coleman ultimately appeared before this Court for a change of plea hearing on August 21, 2014. Coleman pled guilty to the three counts of the Indictment on that date.

During the period of federal custody leading up to the August 21, 2014, hearing, Coleman's state sentence for his parole violation expired, but he had not yet reached the "max date" on the original state conviction. At that hearing, Coleman's counsel requested that Coleman be allowed to return to state custody. This resulted in the following colloquy with the Court:

COUNSEL: Your Honor, I do have a request. He has been sitting now for 17 months on a state parole detainer and they are willing to see him. My understanding from my client is that they're willing to see him as of now because he pled guilty so he is in direct violation and he's losing time credit on his cases because he sat so long on the state detainer. So I'd ask Your Honor, if the Government doesn't object, to issue a writ sending him back to Graterford [State Prison] to see the parole board. And then when they're done with him, they'll send him right back here because he has a detainer here as well obviously.

THE COURT: What about the Uniform Detainer Act?

COUNSEL: I'm not familiar enough with it to — what's your specific question, I guess?

THE COURT: My specific question is how does this impact on what you're asking me to do? That act covers situations where a defendant is writt in from state court and perhaps gets here in some other way.

COUNSEL: But he's not writt in.

THE COURT: And perhaps gets here in some other way and goes through proceedings here, is returned to state court, there's a question whether the federal court loses jurisdiction by doing that.

The Court then ordered that counsel for the defendant and counsel for the government work out a stipulation resolving the jurisdictional issue to allow Coleman to return to state custody. In the interim, the Court concluded the August 21, 2014, hearing by remanding Coleman to the custody of the U.S. Marshals.

Coleman was then returned to federal custody at the Federal Detention Center in Philadelphia ("FDC"). Coleman's sentencing was initially scheduled for November 21, 2014, in this Court. On November 3, 2014, following an unopposed request by Coleman through counsel, the Court granted a continuance of the sentencing hearing until February 19, 2015. On January 30, 2015, following an unopposed request by Coleman through counsel, the Court granted

another continuance of the sentencing hearing, this time until June 18, 2015. This second continuance meant that Coleman was being held in custody at the FDC following a guilty plea with a sentencing date more than 90 days in the future.

The FDC has a critical bed space shortage. To alleviate this shortage, the FDC has a contract with George W. Hill, which allows for a small number of convicted federal prisoners who are awaiting sentencing 90 days or more in the future to be housed at George W. Hill in a special unit designated for federal prisoners.

Pursuant to this policy, on February 26, 2015, Coleman was transferred by the U.S. Marshals from the FDC to George W. Hill. Upon arrival at George W. Hill, however, Coleman was not placed in the special unit for federal prisoners. Instead, Coleman was issued a state prison uniform, his original state inmate booking number, and placed in a state prisoner housing block. Prison officials at George W. Hill state that they were unaware of Coleman's status as a federal prisoner awaiting sentencing. When Coleman realized that he had been placed in the general state prisoner population instead of the special federal prisoner population, he made an Inmate Request for Information to his counselor at George W. Hill, in which he stated that he had a federal case and asked why he was in a state block. George W. Hill officials responded, "There is nothing in our records that indicates you belong in federal custody or that you have a federal case. The state parole board has been contacted and is arranging for your transfer."

Because there were no pending state charges against Coleman and the sentence on his state parole violation had expired, on March 30, 2015, Coleman was transferred from the custody of George W. Hill to the custody of the Parole Board. State officials then transported Coleman to the Pennsylvania State Correctional Institution at Graterford ("SCI Graterford"). Coleman remained at SCI Graterford from March 30, 2015, until April 22, 2015, when this Court issued a

writ of habeas corpus ordering Coleman transferred from SCI Graterford back to the custody of the U.S. Marshals. The Court further ordered that Coleman was to be detained at the FDC until sentencing.

On June 3, 2015, Coleman filed the instant Motion to Dismiss the Indictment for Violation of the Interstate Agreement on Detainers Act.

III. DISCUSSION

The Interstate Agreement on Detainers Act (“IADA”), 18 U.S.C. App. 2, provides “cooperative procedures” to “encourage the expeditious and orderly disposition” of charges and detainers across multiple sovereigns, including the federal government, forty-eight signatory states, and the District of Columbia. 18 U.S.C. App. 2 § 2. The IADA includes provisions that protect the rights of prisoners to speedy trials and access to rehabilitative programs while incarcerated by preventing “shuttling” between sovereigns during the adjudication of pending charges. 18 U.S.C. App. 2 § 2, Art. III-IV.

The IADA anti-shuttling provision applies if a detainer is lodged by one state or the federal government against a prisoner “who is serving a term of imprisonment in [another] party State.” 18 U.S.C. App. 2 § 2, Art. IV(a). The state lodging the detainer is deemed the “receiving state” and the state against whom the detainer is lodged is the “sending state.” 18 U.S.C. App. 2 § 2, Art. II. The provision requires that “[i]f trial is not had on any indictment, information, or complaint contemplated hereby prior to the prisoner’s being returned to the original place of imprisonment . . . such indictment, information, or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.” 18 U.S.C. App. 2 § 2, Art. IV(e).

The Supreme Court concluded that the anti-shuttling provision must be strictly construed based on the IADA's "absolute language." *Alabama v. Bozeman*, 533 U.S. 146, 156 (2001). Even a "one-day violation" of the statute is not "*de minimis*, technical, or harmless." *Id.* A violation of the anti-shuttling provision provides a prisoner with an "absolute defense" to the underlying indictment. *United States v. Williams*, 615 F. 2d 585, 589 (3d Cir. 1980). However, when the United States is the receiving state, dismissal under the anti-shuttling provision may be either with or without prejudice. 18 U.S.C. App. 2 § 9(1). "In determining whether to dismiss the case with or without prejudice, the court shall consider, among others, each of the following factors: the seriousness of the offense; the facts and circumstances of the case which lead to the dismissal; and the impact of a reprosecution on the administration of the agreement on detainees and on the administration of justice." *Id.*

The Government asserts four arguments for why the IADA does not apply to the facts of this case: (1) Coleman was not serving a "term of imprisonment" at the time he was returned to state custody; (2) the IADA does not apply to prisoners who have been convicted but are awaiting sentencing; (3) Coleman's guilty plea extinguished his IADA rights; and (4) Coleman waived his IADA rights by requesting a return to state custody. For the reasons set forth below, the Court rejects each of these arguments and concludes that a violation of the IADA occurred in this case. However, based upon evaluation of the factors in 18 U.S.C. App. 2 § 9(1), the Court concludes that dismissal of the Indictment should be without prejudice.

A. Coleman was serving a "term of imprisonment" at the time the detainer was lodged.

The Government argues that the IADA does not apply in this case because Coleman was no longer serving a term of imprisonment of definite duration in the sending state at the time he was transferred back to state custody. The Court rejects this argument because Coleman was

serving a term of imprisonment at the time the detainer was lodged, which is the relevant point in time for IADA purposes.

The IADA anti-shuttling provision applies only to prisoners who are serving a “term of imprisonment” in the custody of the sending state. 18 U.S.C. App. 2 § 2, Art. IV(a). The “very words of the statute . . . exclude those held in custody for periods of time which are not defined in terms of duration, which are not certain, and which do not follow a conviction or determination of parole revocation.” *United States v. Dobson*, 585 F.2d 55, 59 (3d Cir. 1978); *United States v. Fulford*, 825 F.2d 3, 11 (3d Cir. 1987). Prisoners who are in the custody of the sending state based on a charged parole or probation violation are not serving a term of imprisonment. *Dobson*, 585 F.2d at 59. “[U]ntil a parole revocation hearing has been held, and the parole violator’s parole is revoked and he is recommitted, his status with respect to confinement is . . . uncertain.” *Id.* The defendant in *Dobson* was in state custody pursuant to a state parole violation warrant at the time the detainer against him was lodged. *Id.* at 56. The Court of Appeals concluded that, because of this, the IADA did not apply because the defendant was not serving a term of imprisonment at the time the detainer was lodged. *Id.* at 59.

This interpretation of the statutory language comports with one of the goals of the IADA, which is to protect the prisoner’s interest in “any institutional treatment or program of rehabilitation.” *Id.*; *see also Fulford*, 825 F.2d at 11 (“The statute’s goal is that uncertainties of pending criminal proceedings not obstruct those prison programs.”). Because a parole violator, like a pretrial detainee, lacks an interest in such programs due to the “uncertain and contingent nature of [his] confinement,” the IADA does not apply. *Dobson*, 585 F.2d at 59.

The Government argues that defendant must be serving a term of imprisonment of fixed duration in the sending state at the time the detainer is lodged *and* at the subsequent time the

shuttling occurs. The Court rejects this argument and concludes that the critical time for IADA purposes is the time when the detainer is originally lodged. The text and structure of the IADA favors such an interpretation because the statute authorizes detainers based on the status of the indictment and the prisoner *at the time the detainer is lodged*. Article IV(a) allows the receiving state to lodge a detainer based on “an untried indictment, information, or complaint” against a prisoner who is serving a “term of imprisonment” in the sending state. 18 U.S.C. App. 2, § 2, Art. IV(a). The anti-shuttling provision, Article IV(e), does not refer to a “term of imprisonment,” but instead to “the original *place* of imprisonment” (emphasis added). 18 U.S.C. App. 2, § 2, Art. IV(e). Moreover, the anti-shuttling provision only applies if the original detainer satisfies the requirements of the IADA.

The disruption of the prisoner’s right to rehabilitative services occurs at the time he is removed from the custody of the sending state, and the time within which he must be tried by the receiving state begins to run from that date. Moreover, a transfer back to the sending state after the sentence in that jurisdiction ended would rarely, if ever, occur because a prisoner transferred to the sending state on an expired sentence would theoretically be *released* by the sending state, mooted any IADA anti-shuttling concerns.

In this case, Coleman’s state sentence of imprisonment for violation of parole expired on September 20, 2013, prior to his return to state custody on February 26, 2015. However, *at the time the detainer was lodged*, in July 2013, Coleman was serving a term of imprisonment of fixed duration: his six month sentence for parole violation. Thus, this case is distinguishable from *Dobson* and *Fulford* where the detainers were lodged against the defendants *prior* to an adjudication of a violation of parole. The Court thus concludes that the IADA applies to Coleman because he was serving a term of imprisonment at the time the detainer was lodged.

B. The IADA continues to apply to Coleman after his guilty plea because Coleman has not yet been sentenced.

The Government avers that the IADA does not apply following conviction, and therefore that Coleman had no IADA rights between conviction and sentencing. The IADA anti-shuttling provision refers to “trial . . . on any indictment, information, or complaint.” 18 U.S.C. App. 2 § 2, Art. IV(e). If the trial is not held prior to a return to state custody, the indictment must be dismissed. *Id.* The Government’s position is that “trial” for purposes of the IADA ends at conviction, and that the IADA anti-shuttling provision did not apply in this case because Coleman was convicted and awaiting sentencing when he was transferred back to state custody. The Court rejects this argument because it incorrectly limits the scope of the term “trial” as used in the IADA.

The Government relies on *United States v. Coffman*. 905 F. 2d 330 (10th Cir. 1990). In *Coffman*, the Court of Appeals for the Tenth Circuit held that the IADA did not apply to prisoners held following conviction but prior to sentencing. *Id.* at 332. First, the court concluded that the IADA treated “trial” differently from “final disposition” in its text. *Id.* The court held that “[t]he use of the term ‘final disposition’ . . . when juxtaposed against the use of the word ‘trial’ make clear that the IAD[A] differentiates between the trial phase of a proceeding and all post-trial procedures, including sentencing.” *Id.*

The Court is not persuaded by this reading of the IADA’s text. The words “final disposition” are only used in the IADA as part of the larger phrase “request for final disposition.” In Article III of the IADA, the “request for final disposition” is made by a prisoner to require the sending state to transfer him to the receiving state based on an untried indictment, information, or complaint. 18 U.S.C. App. 2, Art. III(a). The result of a request for final disposition is that the prisoner must be “brought to trial” within 180 days of the request. *Id.* Therefore, regardless of

whether a prisoner is transferred pursuant to his “request for final disposition” or pursuant to an Article IV request by the receiving state (as in this case), the IADA secures the prisoner’s right to a “trial,” which is not distinct from a “final disposition.” The Court concludes that the IADA’s text alone does not resolve the question of whether “trial” for purposes of the IADA ends at conviction or sentencing.

In other contexts, the term trial encompasses sentencing. *See, e.g., Burkett v. Cunningham*, 826 F.2d 1208, 1220 (3d Cir. 1987). In *Burkett*, the Court of Appeals for the Third Circuit held that “the Speedy Trial clause of the Sixth Amendment applies from the time an accused is arrested or criminally charged up through the sentencing phase of prosecution.” *Id.* The Court of Appeals for the Ninth Circuit applied the reasoning of Sixth Amendment Speedy Trial clause cases to the IADA in *Tinghitella v. State of California*. 718 F.2d 308, 311 (9th Cir. 1983) (concluding that the term trial in the IADA includes sentencing because, in most contexts, including the Speedy Trial clause context, the term trial encompasses sentencing). Based on *Burkett*, the Court concludes that trial can include sentencing. Further, an inclusive definition of trial based on Speedy Trial clause cases supports the IADA’s purpose of “securing speedy trial of persons already incarcerated in other jurisdictions.” 18 U.S.C. App. 2, § 2, Art. I.

The Government also argues that limiting the anti-shuttling provision to defendants in custody prior to conviction furthers “the purpose of the IAD[A] to facilitate the interjurisdictional transfer of prisoners and to promote prisoner rehabilitation.” *Carchman*, 905 F.2d at 333. The Court is not persuaded by this argument. Instead, the Court again agrees with the reasoning from *Tinghitella* that “the central policy foundations of the IAD[A] support a broad construction of the term ‘trial.’” 718 F.2d at 311. Interpreting the IADA as strictly forbidding shuttling prior to trial to protect defendant’s right to a speedy trial in the receiving state and the

rehabilitative programs of the sending state but freely allowing shuttling between conviction and sentencing would be inconsistent with the purposes of the statute. A prisoner is not free from the uncertainty of a pending detainer until a sentence is imposed by the receiving state. *See Dobson*, 585 F.2d at 60 (“[T]he inmate who has a detainer against him is filled with anxiety and apprehension . . .”). Thus, the Court concludes that the IADA protects prisoners from shuttling until sentencing.

The Government also cites the Supreme Court’s decision in *Carchman v. Nash* as supporting the proposition that Coleman’s IADA rights ended following conviction. 473 U.S. 716 (1985). However, *Carchman* is plainly distinguishable. In *Carchman*, the Supreme Court held that the IADA did not apply to detainees based on probation-violation charges. *Id.* at 734. The Supreme Court relied on the IADA’s referral to detainees based on “any untried indictment, information, or complaint.” *Id.* at 718-19. Because a probation-violation detainer was not based on an untried indictment, it did not come within the scope of the IADA’s explicit text. *Id.* at 726.

In this case, however, the detainer was lodged against Coleman based on the untried Indictment for bank robbery. *Carchman* does not apply to this case because there is no question that at the critical moment—the time the detainer was lodged against Coleman when he was in the custody of the sending state—the detainer came within the scope of Article IV(a) of the IADA. 18 U.S.C. App. 2, § 2, Art. IV(a).

For all of these reasons, the Court concludes that Coleman still came within the protection of the IADA anti-shuttling provision between the time he pled guilty and his sentencing.

C. Coleman's guilty plea did not extinguish his IADA rights.

The Government argues that Coleman's guilty plea waived his rights under the IADA. The Court rejects this argument because the violation of the IADA in this case occurred *after* Coleman pled guilty.

The Government relies on *United States v. Fulford*, in which the Court of Appeals for the Third Circuit ruled that "entry of a guilty plea acts as a waiver of the provisions of the IADA." 825 F.2d at 10. In *Fulford*, the alleged violation of the IADA occurred prior to the guilty plea. *Id.* at 5, 10; *see also Beachem v. Attorney General of Missouri*, 808 F.2d 1303, 1304 (8th Cir. 1987) (holding that by pleading guilty after violation of IADA defendant waived right to have IADA claim considered); *Kowalak v. United States*, 645 F. 2d 534, 537 (6th Cir. 1981) (same); *United States v. Palmer*, 574 F.2d 164, 167 (3d Cir. 1978) (same). The Court of Appeals based this conclusion on the broader principle that "[w]hen a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred *prior* to the entry of the guilty plea." *Id.* at 10 (quoting *Tollett v. Henderson*, 411 U.S. 258, 267 (1973)) (emphasis added).

The Government cites no case for the proposition that a guilty plea should act as a prospective waiver of all claims of the defendant based on violations of his rights that occur after the plea.¹ As the Supreme Court noted in *Tollett*, a guilty plea cuts off the right to challenge pre-plea constitutional violations because at colloquy a defendant knowingly waives his right to do

¹ The Government cites *United States v. Rodriguez*, but this case was also based on the ruling that the IADA did not apply to convicted prisoners awaiting sentencing. No. 09-cr-606, 2010 WL 5558293 (E.D. Pa. December 22, 2010). The Court has already rejected this interpretation of the IADA. To the extent that *Rodriguez* is also based on a determination that a guilty plea waives a defendant's rights based on prospective violations of the IADA, this Court disagrees with this interpretation of *Fulford* and *Tollett*.

so. 411 U.S. at 266-67. The defendant at colloquy does not, however, waive the right to challenge future violations of his rights. The Court concludes based on this reasoning in *Fulford* and *Tollett* that Coleman's guilty plea in this case did not act as a waiver of his rights as to the IADA violation, which occurred after his plea.

D. Coleman did not waive his IADA rights at the change of plea hearing.

The Government argues that Coleman waived his IADA rights at the plea hearing when he requested through counsel to be returned to state custody for a parole board hearing. The Court rejects this argument because a stipulation to waive Coleman's IADA rights was never entered and because Coleman was transferred back to state custody in error, not based on his request.

A defendant may waive his IADA rights and request a return to the sending state. *See, e.g., Crooker v. United States*, 814 F.2d 75, 77-78 (1st Cir. 1987). In *Crooker*, defendant requested that he be sent back to the receiving state to cooperate with officials in the hope of ameliorating his sentence. *Id.* The Court of Appeals therefore held that "[d]efendant cannot request what might be a violation of the Act, and then assert the requested action as grounds for his release." *Id.*

The facts of this case are clearly distinguishable. While defendant's counsel did request a return to state custody at the change of plea hearing, the Court pointed out that such a return could not occur without the defendant waiving his IADA rights. The Court directed that defendant's counsel "work that out with the Government and submit a proposed form of order." Transcript of Change of Plea Hearing, August 21, 2014, at 39. No stipulation or proposed form

of order was submitted to the Court.² Coleman was subsequently transferred back to state custody, not based on his request at the hearing, which the Court specifically did not grant, but due to an error by the U.S. Marshals when he was transferred to George W. Hill due to overcrowding at FDC. Unlike *Crooker*, in which the transfer occurred in response to defendant's request, Coleman's request was not the reason for his transfer, and thus could not have waived his rights.

E. The indictment against Coleman must be dismissed without prejudice.

The Court concludes that the detainer lodged against Coleman on July 23, 2013, was subject to the provisions of the IADA because it was based on an untried Indictment in this Court and because Coleman was serving a six-month sentence of imprisonment for violation of his state parole at that time. The Court also concludes that a violation of the IADA's anti-shuttling provision, 18 U.S.C. App. 2 § 2, Art. IV(e), occurred when Coleman was erroneously transferred back to state custody on February 26, 2015, prior to his sentencing. Accordingly, there was a violation of the IADA in this case. However, because the United States was the receiving state and upon consideration of the factors listed in 18 U.S.C. App. 2 § 9(1), the Court concludes that dismissal of the indictment should be without prejudice.

The first factor, the seriousness of the offense, favors dismissal without prejudice. Coleman pled guilty to three counts of bank robbery, and each robbery was a serious, violent felony. Moreover, Coleman has a serious criminal history with multiple prior felony convictions.

The second factor, the facts and circumstances leading to dismissal, also favors dismissal without prejudice. Coleman's transfer back to state custody appears to have been the result of

² The Court notes that proposed form orders waiving a defendant's rights under the IADA are routine. *See, e.g.,* Order, Waiver of Detainers Act, Doc. No. 22, *United States v. Dickson*, No. 06-cr-84 (E.D. Pa. October 13, 2015).

administrative error, rather than a deliberate attempt to prejudice Coleman. Further, there is no evidence of any pattern or practice leading to Coleman's transfer to state custody. *See, e.g., Munez v. United States*, 462 F. App'x 172, 175 (3d Cir. 2011) (explaining that a pattern or practice on the part of the government was evidence favoring dismissal with prejudice).

The third factor, the impact of re-prosecution on the administration of justice, also favors dismissal without prejudice. While there was a mistake that led to Coleman's accidental transfer back to state custody, on the record before the Court, this was a one-time error that does not implicate the broader policies underlying the IADA of preventing delays in the resolution of criminal trials and preserving prisoners' access to rehabilitative services. Coleman had pled guilty and was in custody pending sentencing. There is no evidence that the transfer delayed Coleman's sentencing in any way. In addition, Coleman was not eligible for any rehabilitative services prior to sentencing and so these services were not disrupted by his transfer back to state custody. The Court does not find Coleman's arguments regarding his medical condition persuasive because, while unfortunate, the deterioration of Coleman's medical condition was not the result of the transfer, but was due to independent actions of the state prison officials at SCI Graterford. Coleman promptly received treatment upon his return to federal custody. *See, e.g., United States v. Parker*, No. 09-cr-360, 2011 WL 4632177 (D. Md. Oct. 3, 2011) ("That a prisoner has been deprived of medical attention does not automatically require dismissal with prejudice when the charged offense is serious, the return was inadvertent, and the deprivation of medical attention has been remedied.").

Coleman argues that dismissal of the Indictment without prejudice will result in a prejudicial application of time served at any subsequent sentencing on a new indictment. The issue is raised but not fully analyzed in the motion papers. Accordingly, the Court does not

decide it in this Memorandum but will address the argument, if necessary, at any sentencing on a new indictment.

The Court concludes that there was an error or omission in this case that led to Coleman being transferred to state custody in violation of the IADA. While the Court recognizes the administrative difficulties posed by overcrowding at FDC and other prison facilities, if the FDC and the U.S. Marshals use state facilities, like George W. Hill, to house federal prisoners, great care must be taken to ensure retention of jurisdiction over prisoners in federal custody. It is unacceptable that Coleman spent almost 60 days in state custody when he should have been in federal custody, and was not returned to the custody of the proper authorities until issuance of an order from this Court. Nonetheless, this one-time error does not outweigh the factors in favor of dismissal without prejudice. Accordingly, the Court dismisses the Indictment without prejudice.

IV. CONCLUSION

For the foregoing reasons, the Court grants defendant's Motion to Dismiss the Indictment for Violation of the Interstate Agreement on Detainers Act. The Court dismisses the Indictment without prejudice pursuant to 18 U.S.C. App. 2, § 9(1). An appropriate order follows.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES

CRIMINAL ACTION

v.

JERMAINE COLEMAN

NO. 13-356

ORDER

AND NOW, this 5th day of November, 2015, upon consideration of Defendant's Motion to Dismiss the Indictment for Violation of the Interstate Agreement on Detainers Act (Doc. No. 42, filed June 3, 2015), the Government's Response to the Defendant's Motion to Dismiss the Indictment for Violation of the Interstate Agreement on Detainers Act (Doc. No. 46, filed July 14, 2015), and Defendant's Reply Memorandum in Further Support of Defendant's Motion to Dismiss the Indictment for Violations of the Interstate Agreement on Detainers Act (Doc. No. 60, filed September 30, 2015), for the reasons set forth in the accompanying Memorandum dated November 5, 2015, **IT IS ORDERED** that defendant's Motion to Dismiss the Indictment for Violation of the Interstate Agreement on Detainers Act is **GRANTED** and the Indictment is **DISMISSED WITHOUT PREJUDICE**.

IT IS FURTHER ORDERED that the Government is granted leave to re-indict the defendant within 60 days. If additional time is required, the Government shall request it by motion. The Government shall identify any new indictment or information as related to this case.

BY THE COURT:

/s/ Hon. Jan E. DuBois

DuBOIS, JAN E., J.